(1057)

HIGH COURT OF CHHATTISGARH : BILASPUR

Writ Petition No. 5080 of 2005

Petitioner : Kanti Prasad Tiwari
S/o Late Shri Babanram Tiwari
R/o Village Jarhi
Tehsil-Pratappur
Distt-Surguja (C.G.)

Vs.

Respondents :
1. State of Chhattisgarh
Through-Collector
Distt-Surguja (C.G.)

2. Sub Divisional Officer (Revenue)
Pratappur, Distt-Surguja (C.G.)

3. P.S.Toppo
Sub Divisional Officer (Revenue)
P.O.-Pratappur, Distt-Surguja (C.G.)

4. Tehsildar
Tehsil-Pratappur
Distt-Surguja (C.G.)

5. Ratnesh Yadav
R/o Tehsil-Pratappur
Distt-Surguja (C.G.)

Petitioner by Shri Manish Upadhyaya, Advocate.
State/respondent by Shri Sunil Otwani, Panel Lawer.

ORDER
(Passed on 05/12/05)

Dhirendra Mishra, J

The petitioner has preferred this writ petition against the order dated 05.05.2005 by which the Collector, Surguja has accorded permission to the Sub-Divisional Officer, Pratappur to review his earlier order dated 29.04.2005 under Section 51 of the M.P.Land Revenue Code, 1959 (hereinafter referred to as 'the Code') and directed the S.D.O. to pass appropriate order after affording an opportunity of hearing to the aggrieved parties.

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2. The case of the petitioner is that he was allotted 18 acres of disputed land situated in village-Jarhi in the year 1955-56. As per order of the Nistar Officer his name was entered in the revenue records and since then he continued to be in peaceful possession over the disputed land. The petitioner moved an application for settlement before the Settlement Officer in the year 1993 for correction of relevant maps in the revenue records and accordingly on his application revenue case was registered. However, he again moved an application for correction on 08.10.1999 for correction of revenue records and maps on the basis of allotment order and his application was allowed vide order dated 04.01.2005 by respondent No.2. However, the S.D.O./respondent No.2 on applications of the aggrieved parties passed an order under Section 32 of the Code on 23.04.2005 and set aside the order dated 08.04.2005 vide Annexure P/5 by recording a finding that the order dated 04.01.2005 was passed without notice to the affected persons and on the basis of the above order the petitioner obtained the order dated 08.04.2005 from the Court by misleading the Court and keeping the respondents in dark and directed the Halka Patwari to correct the record as before. On application of the petitioner submitted on the same date, the learned S.D.O./respondent No.2 set aside his earlier order dated 23.04.2005 and directed Halka Patwari to correct revenue records as per order dated 08.04.2005. However, this was not the end of the matter as respondent No.2 again on 28.07.2005 initiated proceedings to review his earlier order dated 29.04.2005 by recording a finding that the earlier order was passed without spot inspection and proper inquiry and also without affording an opportunity of hearing to other party and applied to the Collector, Surguja for permission to review whereupon the Collector, Surguja by the impugned order dated 05.08.2005 accorded permission to review after setting aside earlier order.

3. Learned counsel for the petitioner has challenged the impugned orders of Annexure P/22 and P/23. He has preferred the instant petition on the ground that the order dated 29.07.2005 is without jurisdiction as no application for review can be entertained after expiry of period of 90 days and S.D.O./respondent No.2 has initiated this proceedings at the instance of Sarpanch of the Gram Panchayat and President of Mahila Morcha

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Mandal due to political interference and the same is abuse of process of law. Learned counsel for the petitioner further submits that respondent No.2 passed the order dated 23.04.2005 setting aside the earlier order dated 04.01.2005 and subsequent order dated 08.04.2005. However, order dated 23.04.2005 was further set aside by respondent No. 2 vide order dated 29.04.2005 and this order was passed after considering the total material available on record and therefore there was no occasion to pass again an order dated 05.08.2005 to review the order dated 29.04.2004 and the same has been passed on exterior consideration and in fact the same is abuse of process of law.

4. Learned counsel for the petitioner relying upon the judgment of the Hon'ble Supreme Court reported in **(2003) 2 S.C.C. 107** in the matter of **Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd. and others** submits that exclusion of writ jurisdiction on the ground of alternative remedy is a rule of discretion and not one of compulsion and the High Court could exercise its writ jurisdiction in appropriate cases.

5. He also relies upon the judgment of this High Court reported in **2005 (1) C.G.L.J. 415** in the matter of **Ritu Parn Namdeo Vs. State of C.G. and others** for the above purpose.

6. I have heard learned counsel for the petitioner.

7. The whole proceedings as have been brought by the petitioner in this petition are unfortunate; the manner in which respondent No.2 has conducted the above proceedings speaks volumes about his conduct. So far as the procedural objection raised by the petitioner against entertaining of the review petitioner is concerned, the same can be challenged by filing appropriate applications under the Land Revenue Code before the superior revenue authorities.

8. It is true that invariably in all the cases writ jurisdiction is not excluded because of availability of alternative remedy and the High Court has discretion to exercise its writ jurisdiction in spite of availability of alternative remedy. However, in the instant case taking into consideration the manner in which the orders have been passed from time to time by respondent No.2 in favour of the petitioner and against him and further

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considering the impugned order dated 05.08.2005 passed by the Collector, Surguja, by which the S.D.O./respondent No. 2 has been permitted to review his earlier orders and pass appropriate order after hearing the aggrieved parties, it would not be appropriate to interfere under writ jurisdiction against this order.

9. Thus on the basis of aforesaid discussions, the petition is dismissed at the motion stage itself.

10. However, after going through the copy of the revenue records submitted by the petitioner along with his petition, the manner in which respondent No. 2 has conducted throughout the revenue proceedings, deserves thorough enquiry and accordingly it is directed that Collector, Surguja shall get it enquired through some responsible superior officers within a period of three months from the date of receipt of copy of this order and do the needful on the basis of enquiry report. The concerned Collector is also directed to furnish copy of the report to the Registry of this Court as soon as the same is submitted.

Office to send the copy of this order along with copy of the petition with annexures to the Collector, Surguja for compliance.

Sd/-
Dhirendra Mishra
Judge